

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON SMITH)

A BILL FOR

1 An Act relating to health care facilities and programs,
2 including hospital inspector requirements, the hospital
3 licensing board, and dependent adult abuse.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135B.9, Code 2009, is amended to read as
2 follows:

3 **135B.9 Inspections and qualifications for hospital**
4 **inspectors — protection and advocacy agency investigations.**

5 1. The department shall make or cause to be made inspections
6 as it deems necessary in order to determine compliance with
7 applicable rules. Hospital inspectors shall meet the following
8 qualifications:

9 a. Upon hire, have been employed in a hospital within
10 the last two years and have current knowledge of hospital
11 operations.

12 b. Be free of conflicts of interest. A hospital
13 inspector shall not participate in an inspection or complaint
14 investigation of a hospital in which the inspector or a member
15 of the inspector's immediate family works or has worked within
16 the last five years. For purposes of this paragraph, "immediate
17 family member" means a spouse; natural or adoptive parent,
18 child, or sibling; or stepparent, stepchild, or stepsibling.

19 c. Complete a yearly conflict of interest disclosure
20 statement. The department shall submit an annual conflict of
21 interest disclosure report compiling such conflict of interest
22 information to the hospital licensing board.

23 d. Annually, complete a minimum of ten hours of continuing
24 education pertaining to hospital operations including but not
25 limited to quality and process improvement standards, trauma
26 system standards, and regulatory requirements.

27 2. In the state resource centers and state mental health
28 institutes operated by the department of human services, the
29 designated protection and advocacy agency as provided in
30 section 135C.2, subsection 4, shall have the authority to
31 investigate all complaints of abuse and neglect of persons
32 with developmental disabilities or mental illnesses if the
33 complaints are reported to the protection and advocacy agency
34 or if there is probable cause to believe that the abuse has
35 occurred. Such authority shall include the examination of all

1 records pertaining to the care provided to the residents and
2 contact or interview with any resident, employee, or any other
3 person who might have knowledge about the operation of the
4 institution.

5 Sec. 2. Section 135B.11, Code Supplement 2009, is amended
6 to read as follows:

7 **135B.11 Functions of hospital licensing board —**
8 **compensation.**

9 1. The hospital licensing board shall have the following
10 responsibilities and duties:

11 a. To consult with and advise the department in matters of
12 policy affecting ~~administration of this chapter~~ the licensure
13 of hospitals in this state, and in the development of rules
14 and standards provided for under this chapter. This advisory
15 function shall be construed broadly and shall not be limited to
16 licensure issues pursuant to this chapter.

17 b. To review and approve rules and standards authorized
18 under this chapter prior to their approval by the state board
19 of health and adoption by the department.

20 c. To make recommendations on practice issues and policy.

21 d. To review and approve proposed educational programs
22 provided with licensure fee funds. The educational programs
23 provided may cover any subject matter relating to the licensure
24 and operation of hospitals and is not limited to licensure
25 issues pursuant to this chapter.

26 2. Each member of the board may also be eligible to receive
27 compensation as provided in section 7E.6.

28 Sec. 3. Section 235E.1, subsection 5, paragraph b, Code
29 2009, is amended by adding the following new subparagraphs:

30 NEW SUBPARAGRAPH. (4) Circumstances in which a caretaker
31 makes an error in professional judgment or medical care in the
32 care of a dependent adult regardless of the outcome.

33 NEW SUBPARAGRAPH. (5) Circumstances in which a caretaker
34 who is providing security at a facility who, in the process of
35 providing protection to the patients and staff at the facility,

1 injures a dependent adult.

2 NEW SUBPARAGRAPH. (6) Circumstances in which a caretaker
3 responds to another caretaker's request for assistance in an
4 emergency situation and a dependent adult is injured as a
5 result of the emergency response.

6 Sec. 4. Section 235E.1, Code 2009, is amended by adding the
7 following new subsections:

8 NEW SUBSECTION. 6A. "*Gross negligence*" means an act or
9 omission by a caretaker where the caretaker does all of the
10 following:

11 a. Has knowledge of the peril to be apprehended.

12 b. Has knowledge that injury is a probable, as opposed to a
13 possible, result of the peril.

14 c. Consciously fails to avoid the peril.

15 NEW SUBSECTION. 12. "*Willful misconduct*" means an
16 intentional act committed with disregard for a known or obvious
17 risk with the expectation that harm will follow.

18 Sec. 5. Section 235E.2, subsection 2, Code Supplement 2009,
19 is amended to read as follows:

20 2. a. A staff member or employee of a facility or program
21 who, in the course of employment, directly examines, attends,
22 counsels, or treats a dependent adult in a facility or program
23 and reasonably believes the dependent adult has suffered
24 dependent adult abuse, shall report the suspected dependent
25 adult abuse to the department.

26 b. A staff member or employee of a facility or program
27 who, in the course of employment, provides indirect treatment
28 or services to a dependent adult in a facility or program
29 and who reasonably believes the dependent adult has suffered
30 dependent adult abuse may report the dependent adult abuse
31 to the department. For purposes of this paragraph, "*indirect*
32 *treatment or services*" includes treatment or services provided
33 without person-to-person contact such as those provided
34 by administrative, dietary, housekeeping, and maintenance
35 employees. A staff member or employee of a facility or program

1 who provides indirect treatment or services shall, during an
2 orientation program, receive training regarding the prevention,
3 intervention, and detection of dependent adult abuse and
4 neglect and related reporting requirements.

5 c. Persons with de minimus contact with dependent adults
6 in a facility or program shall not be considered staff members
7 or employees for purposes of this section. Persons with de
8 minimus contact include those persons present in a facility
9 or program for a limited purpose, those persons who are not
10 present in a facility or program on a regular basis, and those
11 persons who do not provide any treatment or services to the
12 dependent adults in the facility or program. Such persons
13 include but are not limited to part-time volunteers, building
14 contractors, and repair workers.

15 Sec. 6. Section 235E.2, Code Supplement 2009, is amended by
16 adding the following new subsection:

17 NEW SUBSECTION. 14. When a caretaker in a facility or
18 program is accused of dependent adult abuse, the department has
19 reason to believe that dependent adult abuse has occurred, and
20 the caretaker wishes to appeal this determination, all of the
21 following shall occur before the caretaker's name is listed on
22 the dependent adult abuse registry:

23 a. The caretaker shall have the right to an emergency
24 adjudicative proceeding pursuant to section 17A.18A before
25 an administrative law judge to determine whether the
26 caretaker shall be allowed to continue employment in the
27 facility or program or whether the caretaker may be placed
28 on administrative leave while waiting for a contested case
29 hearing pursuant to section 17A.12. The emergency adjudicative
30 proceeding shall take place within five business days of the
31 department's allegation that dependent adult abuse occurred.

32 b. The administrative law judge shall determine if
33 the caretaker shall be allowed to continue employment
34 in the facility or program and in what capacity. If the
35 administrative law judge determines that the caretaker shall

1 not continue employment, the caretaker may be placed on
2 administrative leave.

3 *c.* A contested case hearing on whether dependent adult
4 abuse occurred shall take place within forty-five days of the
5 informal hearing in the manner provided by section 17A.12.

6 EXPLANATION

7 This bill provides for certain requirements for health
8 care facilities and programs including hospitals. The bill
9 establishes explicit qualifications for persons who inspect
10 hospitals. Inspectors must have been employed in a hospital,
11 be free of conflicts of interest, and obtain annual continuing
12 education.

13 The bill also revises the role of the hospital licensing
14 board by enumerating the specific duties of the board,
15 including advising the department of inspections and appeals
16 concerning hospital licensure, approving legislative proposals,
17 making recommendations on practice issues and policy, and
18 reviewing and approving educational programs provided through
19 licensure fee funds.

20 The bill provides certain exclusions from the definition
21 of dependent adult abuse in a facility or program under Code
22 chapter 235E, including circumstances in which a caretaker
23 makes an error in professional judgment or medical care in
24 the care of a dependent adult regardless of the outcome,
25 circumstances in which a caretaker who is providing security at
26 a facility who, in the process of providing protection to the
27 patients and staff at the facility, injures a dependent adult,
28 and circumstances in which a caretaker responds to another
29 caretaker's request for assistance in an emergency situation
30 and a dependent adult is injured as a result of the emergency
31 response. Under Code chapter 235E, a facility is defined as
32 a health care facility as defined in Code section 135C.1 or
33 a hospital as defined in Code section 135B.1, and a program
34 is defined as an elder group home as defined in Code section
35 231B.1, an assisted living program certified under Code section

1 231C.3, or an adult day services program as defined in Code
2 section 231D.1.

3 The bill defines "gross negligence" and "willful misconduct"
4 for purposes of the definition of dependent adult abuse in
5 Code chapter 235E. "Gross negligence" is defined as an act or
6 omission by a caretaker where the caretaker has knowledge of
7 the peril to be apprehended, has knowledge that injury is a
8 probable, as opposed to a possible, result of the peril, and
9 consciously fails to avoid the peril. "Willful misconduct"
10 is defined as an intentional act committed with disregard for
11 a known or obvious risk with the expectation that harm will
12 follow.

13 The bill provides that a staff member or employee of
14 a facility or program who, in the course of employment,
15 provides indirect treatment or services to a dependent
16 adult in a facility or program and who reasonably believes
17 the dependent adult has suffered dependent adult abuse may
18 report the dependent adult abuse to the department. Indirect
19 treatment or services includes treatment or services provided
20 without person-to-person contact such as those provided
21 by administrative, dietary, housekeeping, and maintenance
22 employees. The bill requires a staff member or employee of a
23 facility or program who provides indirect treatment or services
24 to receive training regarding the prevention, intervention,
25 and detection of dependent adult abuse and neglect and related
26 reporting requirements. Persons with de minimus patient
27 contact shall not be considered staff members or employees for
28 purposes of the bill.

29 The bill provides an administrative review process for a
30 caretaker in a facility or program who is accused of dependent
31 adult abuse. The caretaker shall have the right to an
32 emergency adjudicative proceeding pursuant to Code section
33 17A.18A before an administrative law judge to determine if
34 the caretaker shall be allowed to continue employment in the
35 facility or program or whether the caretaker may be placed on

1 administrative leave while waiting for a contested case hearing
2 pursuant to Code section 17A.12 and an informal preliminary
3 hearing shall take place within five business days of the
4 department's allegation that dependent adult abuse occurred.
5 An administrative law judge shall determine if the caretaker
6 shall be allowed to continue employment in the facility or
7 program and in what capacity and if not, whether the caretaker
8 may be placed on administrative leave. A contested case
9 hearing on whether dependent adult abuse occurred is required
10 to be held within 45 days of the emergency adjudicative
11 proceeding in the manner provided by Code section 17A.12.